In The High Court of Uttaranchal,

at Nainital

Criminal Misc. Application No. 485/2006

Ravi Kant (Managing Director)
M/s Tata Motors Ltd, Bombay House,
24, Homi Mody Street,
Mumbai- 400001 ..... Applicant.

Versus

1- Judicial Magistrate,
Haldwani, District Nainital.

2- M/S Mega Motors (CVD)
Tikonia, Nainital Road, Haldwani
Uttaranchal, through its Partner
S.H.C.P. Khanna.

3- State of Uttaranchal ..... Respondents

Sri K.T.S. Tulsi, Sri V.K. Bisht, Sri S.K. Aggarwal, Learned Senior Counsel, assisted by Sri Sudhir Sigh, Sri S. Vashistha, S. Miyan learned counsel for the Applicant.
Ms. Kamana Vohra and Sri Lalit Sharma, learned counsel for the respondent no. 2.
Sri Nandan Arya, learned A.G.A. for the State.

Hon'ble B.C. Kandpal, J.

By way of this petition U/S 482 Cr.P.C. the applicant has prayed for quashing of the entire proceedings of criminal complaint case No. 444 of 2006, M/s Mega Motors Vs. M/S Tata Motors Ltd, U/Ss 406, 420 and 120-B I.P.C., pending in the Court of Judicial Magistrate, Haldwani.

2- Brief facts giving rise to this petition are that the applicant is the Managing Director of Tata Motors Ltd., a Company incorporated under the provisions of Indian

Companies Act, 1956, having its office at Bombay. The respondent No. 2, M/S Mega Motors (CVD), Tikonia, Nainital Road, Haldwani Uttaranchal through its partner C.P. Khanna filed a complaint before the Judicial Magistrate, Haldwani alleging therein that the complainant, is a partnership firm and is an authorized dealer of M/S Tata Motors Ltd. dealing in sale of Light Commercial Vehicles of M/S Tata Motors Ltd. It is further alleged that one Subroto Kumar visited the office of the complainant in the middle of May, 2005 and asked him to deliver 11 number of vehicles to M/S Tata Motors Ltd. on the assurance that the sum total of the invoice value shall be adjusted by them in the Trade Advance Account maintained at Standard Chartered Bank and a letter in this regard was received by the complainant on 18-5-2005 on behalf of Tata Motors Ltd. It is further alleged in the complaint that on the basis of misrepresentation by Subroto Kumar and in connivance with the Managing Director (petitioner in this) and other accused persons, who are the Officers of the Tata Motors Ltd., the complainant was induced in delivering the 11 vehicles to Tata Motors Ltd. on 18-5-2005, but even after the delivery of the aforesaid vehicles the said amount was not adjusted in the account of the complainant with Standard Chartered Bank inspite of repeated reminders sent by the complainant. It is further alleged in the complaint that on the one hand the Managing Director Ravi Kant along with other accused persons of the M/S Tata Motors Ltd. did not adjust the agreed amount in their Inventory Funding Facility Account of the complainant and on the other hand the Standard Chartered Bank in connivance with M/s Tata Motors Ltd. filed a complaint U/S 138 of the Negotiable Instruments Act against the

complainant. Hence the complainant filed the complaint U/Ss 406, 420 and 120-B I.P.C. against M/s Tata Motors Ltd. and its Officials as well as against the Standard Chartered Bank and its Officers.

3- After filing the complaint, statement of the complainant C.P. Khanna was recorded U/S 200 Cr.P.C. Thereafter the statement of the witness of the complainant was also recorded U/S 202 Cr.P.C. Learned Magistrate on the basis of the complaint as well as the statement of the complainant and his witness took cognizance in the matter and issued process through the summoning order dated 22.5.2006, U/Ss 406, 420, 120- B I.P.C.

4- The petitioner has thus filed this petition for quashing the summoning order dated 22.5.2006 passed by the Judicial Magistrate, Haldwani, as well as the entire proceedings of the criminal case pending against him.

5- The respondent No. 2 M/S Mega Motors Ltd. has appeared before this court and has filed the counter affidavit denying the averments made in the petition.

6- Heard leaned counsel for the parties and perused the record.

7- Learned counsel for the petitioner has filed the supplementary affidavit stating therein that he was not the Managing Director of M/S Tata Motors Ltd. at the time of the commission of the alleged offence, i.e. 18.5.2005 when the alleged representation is alleged to have been made by the accused persons to induce the complainant. It has stated in the supplementary

affidavit that the petitioner has been appointed as Managing Director of the M/s Tata Motors Ltd. only on 25-7-2005. A copy of the Board resolution by which the petitioner has been appointed as Managing Director of the M/S Tata Motors has been filed as Annexure – A to the supplementary affidavit. The petitioner has also filed the certified copy of the certificate of incorporation of Tata Finance Limited and Tata Motors Limited and copy of the order of the Bombay High Court alogwith the scheme of reorganization and amalgamation as Annexure-E to the supplementary affidavit. Therefore, on the basis of these documents learned counsel for the petitioner has submitted that at the time of commission of alleged offence Tata Finance Limited and Tata Motors Limited were two separate corporate legal entities, distinct from each other, each having independent Board of Directors and Officers to run the companies and the petitioner was thus not controlling the affairs of Tata Finance Ltd.

8- A supplementary counter affidavit has been filed by the respondent No. 2, stating therein that the petitioner is now trying to change the complexion of the case by setting up a new case which is contrary to the complaint dated 27-3-2006 and also the pre-summoning evidence in the form of statement of answering respondent. It has also been pleaded in the supplementary counter affidavit that issue of raising a new plea that the petitioner was not the Managing Director of M/s Tata Motors Limited at the time of commission of the alleged offence is untenable and the effort by the petitioner to raise this new pleas and to side track the entire case is nothing but a desperate attempt on his behalf to allege his innocence and to project that he was not aware of the whole transaction

in question. It has further been pleaded in the said supplementary counter affidavit that the allegations against the petitioner are in his individual capacity as well as in the capacity as the head of the Company .

9- In order to appreciate the submissions advanced by the learned counsel for the parties as well as the pleadings filed by them, it would be necessary to have a perusal of the allegations made in the complaint filed by the respondent No. 2. The allegations made in the complaint nowhere indicate that there is direct allegation against the petitioner with regard to the conspiracy. Paragraph- 4 of the complaint shows that Subroto Kumar, accused No. 3 in the complaint, on the basis of misrepresentation on behalf of Tata Motors and in connivance with petitioner as well as the other Officers of the Tata Motors fraudulently and dishonestly induced in delivering the 11 vehicles to Tata Motors through their authorized representative signatory.

10- From bare perusal of the entire complaint it is indicated nowhere that any particular act was specifically attributed to the petitioner. There is no allegation in the complaint that the petitioner was incharge of, and was responsible to the firm for the conduct of business of the firm. The documents on the other hand clearly reveal that the petitioner became the Managing Director of M/s Tata Motors Ltd. on 29-7-2005. The documents further reveal that the amalgamation of Tata Finance Limited and Tata Motors Limited took place with effect from 24-6-2005. Therefore, it is quite clear that on 18-5-2005 when the offence is alleged to have taken place, Tata Finance Limited and Tata Motors Limited were two separate

corporate entities, each having independent Board of Directors and Officers to run the companies.

11- The Hon'ble Supreme Court in the case of **Katta Sujatha (Smt) Vs. Fertilizers & Chemicals Travancore Ltd.** reported in **(2002) 1 S.C.C. 24,** has observed that in case if there is no allegation in the complaint that the person concerned was incharge of and was responsible to the firm for conduct of the business of the firm, then no case is made out against the said person or partner of the firm and the said complaint is not maintainable against the said person.

12- The Hon'ble Apex Court in an another case of **State of Haryana Vs. Brij Lal Mittal & Ors.** reported in **(1998) 5 SCC 21,** has also held that the vicarious liability of a persons for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in charge of and was also responsible to the company for the conduct of its business. Simply because a persons is a Director of the Company it does not necessarily mean that he fulfills both the above requirements as to make him liable.

13- In the instant case also, except a bald statement in the complaint that the petitioner is the Managing Director of M/s Tata Motors Limited, there is no other allegation to indicate even prima facie that the petitioner was incharge of the company and was also responsible to the company for the conduct of its business on the date of the alleged offence. Therefore, I am of the view the complaint against the petitioner is not liable to be maintained.

14- Learned counsel for the respondent No. 2 has vehemently argued that the petitioner has conspired with other accused persons in order to commit an offence of cheating U/S 420 I.P.C. read with Section 120-B I.P.C., as the petitioner in connivance with other accused persons cheated the complainant by dishonest inducement with the dishonest intention at the very inception to deliver 11 vehicles to them. The learned counsel for the respondent No. 2 also cited a number of decisions of the Hon'ble Apex Court in order to show that since disputed questions of facts are involved in this case, hence there is no scope for interference U/S 482 Cr.P.C. in this matter.

15- I fail to appreciate the submission advanced by the learned counsel for the respondent No. 2. In the instant case it is prima facie clear that the petitioner was not incharge of and responsible to the company for the conduct of the business of the company on the alleged dated of offence.

16- In view of the aforesaid, I come to the conclusion that the complaint against the petitioner is not maintainable and the order dated 22-5-2006 summoning the petitioner to face the trial U/Ss 406, 420 and 120-B I.P.C. by the Judicial Magistrate, Haldwani is liable to be quashed.

17- Accordingly the petition is allowed. The impugned order dated 22-5-2006 as well as the proceedings of criminal complaint case No. 444/2006, M/S Mega Motors Limited Vs. M/s Tata Motors Limited and others U/Ss 406, 420 120-B I.P.C. pending in the Court of Judicial Magistrate, Haldwani, District Nainital are hereby quashed as far as it relates to the

petitioner Ravi Kant, Managing Direction of M/S Tata Motors Limited.

(B.C. Kandpal, J.)

Dated 07-08-2006
ISB